IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2440 OF 2005

Mr.Dilawar Hakim Shah : Petitioner

V/s.

Special Recovery Officer, Chiplun Urban Cooperative Bank Ltd. & Ors. : Respondents

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Mr.Sachin Punde for the petitioner.

Mr.S.M.Railkar for the respondent nos.1 & 2.

Mr.A.H. Palekar, Asstt. Govt. Pleader for the respondent no.3.

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CORAM : S.A. BOBDE, J.

October 25, 2005.

ORAL ORDER :

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioner has challenged the order dated 22.2.2005 passed by the Divisional Joint Registrar,

Co-operative societies, Konkan Division, refusing to accept his revision application on the ground that he has not deposited 50% amount of the total amount of recoverable dues as required under section 154(2A) of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". Admittedly, the recovery certificate was issued on 30.8.2003 and the petitioner filed the revision on 22.2.2005. This application for revision was made after the period of limitation of two months had expired. The petitioner, therefore, applied for condonation of delay.

3. Without considering the application for condonation of delay, the Divisional Joint Registrar has rejected the petitioner’s revision on the ground that he has not deposited 50% amount of the total amount of recoverable dues as required by section 154(2A) of the Act. There is no dispute that this deposit is mandatory.

4. The question that arises for consideration is whether the bar of sub-section (2A) that no application for revision shall be entertained against the recovery certificate unless the applicant deposits with the concerned society, 50% amount of the total amount of recoverable dues applies even for considering the application for condonation of delay for such revision.

Section 154 reads as follows:-

> "**154. Revisionary powers of State Government and Registrar**.--The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings, if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.
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> (2) Under this section, the revision shall lie to the State Government if the decision or

order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, fifty percent, amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions if any, as may be specified in the direction, be exercised also by an officer

of the rank of Secretary to Government."

5. We are concerned here with sub-sections (2A) and (3). On a plain reading of sub-section (2A), it is clear that it bars an application for revision from being "entertained" by the Registrar unless the applicant deposits 50% amount of the total amount of recoverable dues. The section does not bar the Registrar from considering the application for condonation of delay which precedes the entertainment of a revision unless the applicant deposits with the concerned society, 50% amount of the total amount of recoverable dues. In fact, as is clear from sub-section (3), the Legislature has prohibited the Registrar from entertaining a revision if it is made after two months from the date of communication of the decision or order. That sub-section also empowers the Registrar to "entertain" any such revision application made after the period if the applicant satisfies the Registrar that he had sufficient cause for not making the application within such period. Sub-section (3), therefore, clearly contemplates that the Registrar can entertain a "revision application" after the period of limitation, only if he is satisfied that the applicant had sufficient cause for not making the application within such period.

6. What falls for consideration in an application for condonation of delay is whether the applicant had sufficient cause for not making the application within the prescribed period. The entertainment of the revision is another matter, the occasion for which arises if and after delay is condoned. There is thus a clear demarcation between the proceedings taken for establishing that there was sufficient cause for not approaching the Registrar within the prescribed period and the entertainment of the revision itself.

7. The word "entertain" has been interpreted by the Supreme Court in Lakshmiratan Engineering Works Ltd., vs. Assit. Commissioner (Judicial) 1, Sales Tax, Kanpur Range (A.I.R. 1968 S.C. 488) in the context of an appeal wherein Their Lordships held that the word "entertain" means "to deal with or admit to consideration" and not receiving or filing of the appeal. This decision has been subsequently followed by Their Lordships in Hindustan Commercial Bank Ltd., vs. Punnu Sahu (A.I.R. 1970 S.C. 1384). Undoubtedly, therefore, because the application for condonation of delay is filed along with the appeal, it cannot be said that bar of sub-section (2A) applies even for considering the application for condonation of delay. The statutory scheme of section 154 is clear. It firstly requires a party to show sufficient cause for

preferring the revision beyond the prescribed period and empowers the Registrar to entertain the revision only after sufficient cause is shown. The revision can be said to have been received along with the application for condonation of delay, but is not entertained until the delay is condoned as required by sub-section (3) itself. The bar of sub-section (2A) applied to the entertainment of a revision unless the applicant deposits 50% of the total amount of recoverable dues. It is clear that it cannot be said that the revision is entertained unless the delay in filing it is condoned and by making out sufficient cause.

8. In the result, the impugned order is hereby set aside and the respondent-Divisional Joint Registrar is directed to consider the application for condonation of delay on its merits and proceed in accordance with law.

9. The rule is made absolute in the above terms.

Sd/-

(S.A. BOBDE, J.)